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★ AUG 02 2019 ★

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

D. JOSEPH KURTZ, individually and on
behalf of all others similarly situated,

Plaintiff,

– against –

KIMBERLY-CLARK CORPORATION &
COSTCO WHOLESALE CORPORATION,

Defendants.

ORDER

14-CV-1142

ANTHONY BELFIORE, individually and on
behalf of all others similarly situated,

Plaintiff,

– against –

THE PROCTER & GAMBLE COMPANY,

Defendant.

14-CV-4090

JACK B. WEINSTEIN, Senior United States District Judge:

The court has the parties' July 31, 2019 letter concerning the order of evidence during the evidentiary hearing to take place on August 6, 7, and 8, 2019. The hearing is to occur following remand of the cases by the Court of Appeals for the Second Circuit. The Court of Appeals

note[d it's] specific concern with the Plaintiffs' proof that they can establish the injury and causation elements of their claims at trial with common evidence. . . . On remand, the district court should offer the parties the opportunity to submit additional evidence and should then assess whether the Plaintiffs have 'affirmatively demonstrated [their] compliance' with Rule 23(b)(3)'s predominance requirement. . . . After further review of the record, the district court should choose whether to decertify the damages classes or maintain the current certification orders.

Summ. Order 4, No. 17-1856, No. 17-1861 (2nd Cir. May 14, 2019) (internal citation omitted).

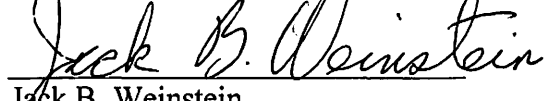
In view of the efficiency expected, Defendants' proposed schedule for the hearing is adopted. The schedule is as follows:

- Plaintiffs' expert Colin Weir will testify, subject to cross-examination and re-direct.
- Defendant Kimberly-Clark's fact witness will testify, subject to cross-examination and re-direct.
- Defendant Kimberly-Clark's expert witness will testify, subject to cross-examination and re-direct.
- Defendant Procter & Gamble's expert witness will testify, subject to cross-examination and re-direct.
- Defendant Costco's expert witness will testify, subject to cross-examination and re-direct.
- Plaintiffs' expert Colin Weir may offer rebuttal testimony, subject to cross-examination and re-direct.

The court will rely on counsel to summarize in argument (and any post-hearing briefing), the evidence relevant to each of the three proposed classes and the issues noted by the Court of Appeals.

Any modifications of the schedule because of exigencies may be requested by the parties during the hearing.

SO ORDERED.


Jack B. Weinstein
Senior United States District Judge

Dated: August 1, 2019
Brooklyn, New York